APPEAL NO. 023157
FILED FEBRUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 15, 2002. The hearing officer determined that the respondent's (claimant herein) compensable injury included an injury to the cervical spine at C5-6, but not at C3-4 or C4-5; that the claimant's correct impairment rating (IR) is 17%; and that the claimant is not entitled to supplemental income benefits for the first, second, or third quarter. The appellant (carrier herein) appeals the determination of the hearing officer that the claimant's compensable injury includes an injury to her cervical spine at C5-6 and that her IR is 17%. There is no appeal from the claimant and no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The carrier's appeal regarding IR is based upon its appeal of the hearing officer's extent-of-injury finding. The carrier argues that the claimant's IR is not 17% because the designated doctor should not have included a rating for the claimant's cervical spine as the claimant's injury did not include an injury to her cervical spine.

Thus the key issue before us on appeal is whether the hearing officer erred in finding a cervical spine injury. The carrier argues that the hearing officer erred because his determination that the claimant's injury included a cervical injury was misapplication of the doctrine of *res judicata* and because it was contrary to the evidence.

We first note that the hearing officer grounded his determination that the claimant's injury included a cervical injury on several grounds. In his decision the hearing officer states as follows:

> I find that the Claimant established a neck injury for the following reasons:
>
> (1) there is a prior decision and order which said so. (2) The claimant struck her head in the fall. (3) There were more or less continuous complaints of neck pain since the fall. And (4) the mechanism of the claimed injury supports a cervical spine injury.

In its appeal the carrier emphasizes why it believes that *res judicata* does not apply in the present case. We feel that we need not address these arguments as the hearing officer clearly based his decision that the claimant's injury extends to a cervical injury on more than the application of *res judicata*. In fact the hearing officer explicitly states this in his decision when he writes as follows:

> Thus, in an abundance of caution, my resolution of the precise extent of injury issue in this case now before me does not derive from a strict application of res judicata.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

There was conflicting evidence concerning the extent of the claimant's injury. Applying the standard of review above, we find that there was sufficient evidence in the record to support the hearing officer's finding that the claimant's injury included an injury to her cervical spine at C5-6. Under these circumstances, we do find it necessary to determine whether or not the hearing officer correctly applied the doctrine of *res judicata*.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Daniel R. Barry
Appeals Judge

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Robert W. Potts
Appeals Judge